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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 424

I. A. WATSON, JR., *et al.*,

Petitioners,

—v.—

CITY OF MEMPHIS, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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Opinions Below

The district court rendered an unreported oral opinion (R. 105). Its judgment (R. 102-04) was filed June 20, 1961. Its Findings of Fact and Conclusions of Law (R. 91-101), filed on June 27, 1961, are unreported. The opinion of the Court of Appeals (R. 111-122) is reported at 303 F. 2d 863.

Jurisdiction

The judgment of the Court of Appeals was entered June 12, 1962 (R. 110). The petition for writ of certiorari was filed September 10, 1962, and was granted November 19, 1962 (R. 123). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

Questions Presented

Petitioners sued to enjoin the continued operation of the Memphis park system on a racially discriminatory basis. Relying on the decision in *Brown* v. *Board of Education*, 349 U. S. 294 (1955), the district court denied the injunction and accepted respondents' plan to desegregate gradually over a period of years. The Court of Appeals affirmed on the same ground.

Do the principles stated in the second *Brown* opinion, which allow public school authorities to proceed toward desegregation "with all deliberate speed":

1. Have any application beyond the field of public education?

2. Apply to the field of public recreation?

3. If applicable to public recreation, justify continued segregation absent a showing of serious administrative impediments to desegregation?

Constitutional Provision Involved

This case involves Section One of the Fourteenth Amendment to the Constitution of the United States.

Statement

On May 13, 1960, petitioners for themselves and other Negro citizens residing in Memphis, filed suit in the United States District Court for the Western District of Tennessee, Western Division, for a declaratory judgment and permanent injunction restraining the Memphis Park Commission and others from operating public recreational facilities on a racially segregated basis. Jurisdiction was based on 28 U.S.C. §1343(3), 28 U.S.C. §§2201, 2202 and 42 U.S.C. §§1981, 1983.

In substance they complained that defendants maintained some facilities exclusively for white and others exclusively for Negro citizens. Petitioners further alleged that they and other members of the class attempted to use facilities restricted to white persons and were barred or arrested on account of race or color contrary to the equal protection clause of the Fourteenth Amendment and 42 U.S.C. §1981 (R. 2).

July 1, 1960, defendants answered (R. 8-12). The answer did not deny operating segregated recreational facilities. Rather, defendants asserted in justification: that facilities for Negroes were equal to those for whites; that Memphis provided a system of neighborhood parks designated for whites or Negroes according to the racial make-up of the area and that "[i]n other than residential areas, the parks are used generally by all the citizens of Memphis" (R. 9);[1] that certain lands upon which recreational facilities were situated were acquired under restrictive conditions relating

[1] Evidence, however, showed that the neighborhood policy was not uniformly adhered to in that in some previously white neighborhoods which became predominantly Negro, the parks or playgrounds were still maintained exclusively for whites (R. 78). Moreover, at least one city-wide facility, Crump Stadium, was still operated on a segregated basis (R. 79).

to use solely by white persons; that "problems" in the nature of "riots, violence, and disharmony" (R. 10, 11) would be the likely consequence of immediate court-ordered desegregation of all facilities and, therefore, these defendants in discharge of their duties as public officers and in exercise of their police power felt it necessary to maintain the system as constituted; that a loss of revenue would result from a loss of attendance caused by fear of disorders; that the expense of operating the parks would be prohibitive because of the extra police protection required, since "the incidence of violence, vandalism and disorders among visitors to the parks of the City of Memphis is greatly increased in those parks frequented by Negro citizens of the City of Memphis" (R. 12).

The cause came on for trial June 14-15, 1961. The facts were established substantially as plaintiffs alleged: The City of Memphis, through its Park Commission, operated and maintained a public recreational system of 108 parks[2] on city-owned land. Fifty-eight of the parks were reserved for the exclusive use of white persons, 25 were for Negroes, and 25 were partially or wholly integrated.[3] The facilities reserved for whites included 40 neighborhood playgrounds, 8 community centers, 5 golf courses and 5 swimming pools (R. 93). Negroes who attempted to use "white" facilities were denied admission, and in some cases were arrested if they refused to leave when ordered (R. 25, 74-77). Reserved for Negroes were 21 neighborhood play-

[2] In addition, the Park Commission operated 56 playgrounds and facilities on property owned by various churches; 30 designated as "white," the rest restricted to Negroes (R. 70).

[3] At at least one of these facilities, however, racial bars had not been completely removed; the toilet facilities at Overton Park Zoo were still segregated at the time of trial (R. 83). Testimony also revealed that at one of the older "integrated" facilities, Court Square, there were toilets for whites only (R. 75).

grounds, 4 community centers, 5 swimming pools, and 2 golf courses (R. 93).

The Park Commission's policy was to open up parks from time to time for all citizens (R. 39). It had recently removed racial restrictions at three "city-wide" facilities as part of its gradual desegregation plan (R. 40), and other facilities throughout the city were scheduled to be desegregated on a gradual basis in accordance with that plan (R. 41). Commission officials and the local chief of police testified that, in their opinion, any desegregation in public recreational facilities taking place in any manner other than that proposed by the Commission's gradual plan would produce turmoil, confusion, and perhaps bloodshed in the City of Memphis (R. 42, 48, 53, 88), although there had not been any violence in the past due to the integration of facilities nor had any "agitators" appeared (R. 53, 81). The belief that immediate integration of all facilities would lead to violence was based on anonymous letters and phone calls that were received when facilities had been integrated in the past (R. 53). They further testified that Memphis, having been "singularly blessed by the absence of turmoil up to this time," the Park Commission desired to make all City-wide facilities available to Negroes "with all deliberate speed" (R. 43).

There was evidence relating to an art gallery and museum known as the "Pink Palace" in support of defendants' assertion that certain lands upon which public recreational facilities had been built had been acquired through deeds containing racially restrictive covenants. It was urged, therefore, that complete integration should await construction of these deeds by the Tennessee courts (R. 39).[4]

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[4] However, the Pink Palace Museum had been opened for Negro use one day per week (R. 50) without objection from the corporate grantor or its successors (R. 50, 51).

On June 20, 1961, the District Court, the Honorable Marion Speed Boyd presiding, entered judgment denying petitioners' application for permanent injunction as prayed in the complaint, approving the Park Commission's gradual plan (R. 102-104), requiring defendants to submit a further plan with respect to integration of playgrounds and community centers within a period of six months,[5] and staying decision with reference to the Pink Palace Museum until the Chancery Court of Shelby County, Tennessee, had an opportunity to determine the effect of integration of the races upon the title to this property (R. 103). The Court in its Findings of Fact and Conclusions of Law (R. 91-101) found that because of the local conditions in Memphis, additional time was needed to accomplish full desegregation of the public recreational facilities and that the gradual plan was in the public interest and was "consistent with good faith implementation of the governing constitutional principles as announced in *Brown* v. *Board of Education* [349 U. S. 294 (1955)]" (R. 101).

Petitioners on July 7, 1961, appealed to the United States Court of Appeals for the Sixth Circuit. On June 12, 1962, that Court affirmed the judgment of the District Court on the Findings of Fact and Conclusions of Law of the District Judge. The Court of Appeals stated that the sole issue tendered by petitioners on their appeal was whether the allowance of any delay in total desegregation of all Memphis recreational facilities deprived them of their constitutional rights, i.e., whether the decision in the second *Brown* case applied to public recreational facilities as well as to public schools. In deciding this issue, the Court said:

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[5] Under the provisions of this plan, which was submitted on oral argument in the Court of Appeals at that Court's request, complete integration of all facilities would not occur until 1971. The plan, however, was not made part of the record.

We are of the view that the principle stated in *Brown* v. *Board of Education*, *supra*, relating to the desegregation of schools, is applicable to the present case, involving the desegregation of recreational facilities of the City of Memphis. In our opinion the *Brown* decision is not limited to cases involving public schools, as is here contended by appellants. *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180, 184, 185 (C. A. 6); see also *Cummings* v. *City of Charleston*, 288 F. 2d 817 (C. A. 4) (R. 120).

ARGUMENT

I.

Constitutional Rights Should Be Enforced Immediately. To This Established Rule the Second *Brown* Decision Is a Narrrow Exception Which Was Never Intended to Cover Anything But Public Elementary and Secondary Schools.

There can be no question that the Fourteenth Amendment entitles petitioners to the nondiscriminatory use of all parks and recreational facilities operated by the City of Memphis. At issue here is whether any justification exists for prolonged abridgement of these rights. Petitioners find none and contend that the desegregation of these public recreational facilities must be effected immediately.

Constitutional rights are personal and present. This settled principle, which means that the enforcement of recognized constitutional rights cannot be put off until some future time, has often been invoked by this Court in cases closely analogous to this one. See *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, 642; *Sweatt* v. *Painter*, 339 U. S. 629, 635; *Sipuel* v. *Board of Regents of University*

of Oklahoma, 332 U. S. 631, 632-33. The logic of the rule is demonstrated by the paradox that would ensue if this case were affirmed: thousands of Negroes in Memphis would be denied admission to scores of city parks for several years although the right of which they demand immediate exercise has been recognized—in the abstract—by the highest court in the land.

The courts below have held that the second *Brown* decision, *Brown* v. *Board of Education*, 349 U. S. 294 (1955), controls this case and permits lengthy delay in the full implementation of petitioners' admitted constitutional rights. Petitioners disagree, for that decision can have no application to any area other than public schools.

A fundamental distinction exists between the decision of May 17, 1954, and that of May 31, 1955. In the former, *Brown* v. *Board of Education*, 347 U. S. 483, this Court was acting in its role as expositor of the Constitution, and it declared that segregated educational facilities, being inherently unequal, constituted a denial of the equal protection of the laws. Since 1954, this principle has properly been extended, by this Court and by the lower courts, to every aspect of public activity. However, in 1955, this Court was exercising its function as a court of equity, which must deal with the circumstances of the particular case when framing a specific decree. Recognizing that the "solution of varied local *school* problems" could best be effected by the district courts, this Court remanded each of the consolidated cases for detailed treatment by the respective district courts. This remedial determination stemmed from an examination of the peculiar difficulties arising from the alteration of complex public school systems, and has no relevance whatever to other areas in which segregation has been enforced.[6]

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[6] See, e.g., *Gayle* v. *Browder*, 352 U. S. 903 (public transportation): "The motion to affirm is granted and the judgment is affirmed. *Brown* v. *Board of Education*, 347 U. S. 483 . . . " It is to be noted that the 1955 opinion was not cited.

The narrow compass of the 1955 decision was demonstrated the following year when this Court ordered the immediate admission of a Negro applicant to graduate school. *Florida ex rel. Hawkins* v. *Board of Control*, 350 U. S. 413 (1956). On May 24, 1954, the Supreme Court had issued a mandate to the Supreme Court of Florida directing that the case be reconsidered in light of the decision of 1954 "and conditions that now prevail." *Florida ex rel. Hawkins* v. *Board of Control*, 347 U. S. 971. Following the Florida Supreme Court's subsequent refusal to grant the Negro immediate relief, this Court held that its previous decision "did not imply that decrees involving graduate study present the problems of public elementary and secondary schools." 350 U. S. at 413. See also *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir. 1957). It is also significant that in *Dawson* v. *Mayor and City Council of Baltimore*, 220 F. 2d 386 (1955), *aff'd*, 350 U. S. 877 (1955), this Court affirmed the Fourth Circuit's ruling without opinion, despite the City's insistence[7] that the second opinion in *Brown* should apply.[8]

Apart from precedent, strong considerations of policy suggest that the doctrine of the second *Brown* opinion should be limited rather than extended. First, it is an anomaly in the law that personal rights—especially rights so highly valued as those protected by the equal protection

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[7] Jurisdictional Statement, p. 19, *Mayor and City Council of Baltimore* v. *Dawson*, 350 U. S. 877 (No. 232, Oct. Term 1955).

[8] Contrary to the conclusion of the court below, the lower courts have not countenanced delay in areas other than schools. In *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180 (1955), the Sixth Circuit upheld a district court order requiring immediate assimilation of separate waiting lists for Negro and white housing projects. While the relief given could not assure the immediate achievement of nonsegregated occupancy, it effected all that could possibly be done in the situation. In *Cummings* v. *City of Charleston*, 288 F. 2d 817 (4th Cir. 1961) (municipal golf course), the plaintiffs received all the relief they requested.

clause—should not be enforced forthwith. Second, around the "all deliberate speed" formula has grown a mass of litigation which, because of its complexity, severely burdens the lower courts. Finally, after nine years of experience with the "all deliberate speed" doctrine, 92.2% of the Negro school children in 17 states and the District of Columbia attend schools with no white students.[9] This is the result, on the one hand, of widespread disregard of the great principle established in 1954, and on the other hand, of the tremendous burden which the 1955 decree imposes on those who must look to the courts for enforcement of their rights.

II.

Irrespective of Whether the Second *Brown* Decision Has Any Applicability Beyond the Area of Elementary and Secondary Schools, It Does Not Apply to Public Recreational Facilities.

In the *School Segregation Cases*, this Court was dealing with the problem of transforming totally segregated systems of public elementary and high schools into systems providing full equality through the elimination of segregation. Involved in such a transformation, as the Court recognized, were taxing problems of an administrative nature, particularly those

> arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis and revision

[9] Between 1961 and 1962 the percentage of Negro children in schools with white students increased from 7.6 to 7.8. See *Southern School News*, p. 1, published by the Southern Education Reporting Service (December 1962).

> of local laws and regulations which may be necessary in solving the foregoing problems (349 U. S. at 300-01).

Clearly, the desegregation of a public recreational system presents no such administrative difficulties as might arise in public schools. Attendance at public parks is not compulsory. Users of parks are not transported to them at public expense. Persons need not be assigned to individual parks or facilities. Whereas the overcrowding of schools presents a serious obstacle to rapid desegregation, overcrowded conditions in park facilities are automatically controlled by factors of supply and demand; the first comers are served while the late comers wait their turn, find other accommodations or do without the benefits of the facilities, all at their own discretion. Recreational activities, being less closely supervised, require fewer personnel than schools. Local park authorities are bound by fewer and less restrictive state regulations than school boards.

In sum, the administration of a park system is less complex. Effectuation of complete desegregation of public parks requires little more than the removal of racial signs, and an announcement that racial distinctions will no longer be observed. In all other respects, the park system can operate on a desegregated basis exactly as it does on a segregated basis.[10]

[10] Full integration of park personnel requires some administrative effort, but such relief is not requested in this case.

III.

Assuming That in Some Cases the Principles of the Second *Brown* Decision May Be Applied to Delay Desegregation of Public Recreational Facilities, This Record Presents No Considerations Which Justify Delay.

Petitioners maintain that the second *Brown* decision sanctions delay in the public schools only, and that in any event it does not permit continued segregation of public recreational facilities. Assuming, however, that neither of these arguments finds favor with this Court, it is submitted that faithful application of the 1955 decision to the facts established in this record requires an order directing immediate desegregation of the Memphis park system.

Petitioners proved at trial that the Memphis Park Commission operates a city-wide, public recreational system on an almost wholly segregated basis (R. 92, Finding No. V). It was further shown that several Negro citizens had been denied admission to or ejected from various facilities or arrested for refusing to leave, solely on the ground of race. These facts were uncontested. Upon such a clear showing of a violation of constitutional rights, normal procedure for any court is to formulate a remedy which will eliminate such denials forthwith. This the district court did not do.

Justification for this departure from normal practice was predicated on the *Brown* opinion of 1955. However, in that case this Court did not give the lower courts *carte blanche* to withhold relief in desegregation cases until the administrative authorities deemed compliance with the governing constitutional principles to be convenient or desirable. It merely declared that varying local conditions

may at times make immediate compliance impracticable, and set forth a list of those administrative problems which could be considered as justifiably prolonging the process of complete obedience. The burden of presenting the case for delay rests on the defendants who have violated the Constitution, 349 U. S. at 300, and absent a showing of administrative impracticability, the district court's duty to order immediate desegregation remains.

By a parity of reasoning, if the doctrine of "all deliberate speed" is to be applied to recreational systems, delay cannot be tolerated unless such administrative factors as those listed in the second *Brown* decision are shown by the public officials to require some hesitation in the complete vindication of a complainant's rights. Respondents in this case utterly failed to carry the burden placed upon them. At the trial, their witnesses made dire predictions about the consequences of immediate integration, but examination of each supposed problem reveals both the inadequacy of proof presented and the irrelevance of the considerations raised.

Confusion, Turmoil and Bloodshed

Time and again throughout the trial, respondents' three witnesses expressed the fear that confusion, turmoil, violence and bloodshed would ensue if desegregation proceeded rapidly (R. 42, 43, 47, 53-55, 57, 72, 73, 80-87, 87-90). However, these oft-repeated convictions were supported by almost no facts. One witness testified that he received anonymous letters and telephone calls whenever a facility was opened to both races (R. 53). Another mentioned that policemen sometimes had to be called to control rowdyism on the segregated playgrounds, more often on Negro playgrounds (R. 81). One reference was made to the fact that additional police had been assigned to a recently desegre-

gated zoo. Finally, one incident was mentioned in which "bloodshed and shootings and knifings" had occurred in one Negro park (R. 83). No other evidence of previous violence was produced, although racial bars had been removed at twenty-five facilities by the time of trial.

On the other hand, the Chairman of the Park Commission acknowledged that Memphis has been "singularly blessed by the absence of turmoil up to this time on the racial question" (R. 43), and testified that no violence had erupted at any of the integrated facilities (R. 53). Indeed, police protection in the park system generally seems not to be a very serious problem, since there are only fourteen men on the city's entire park police force (R. 84). It also appeared from the testimony that the police have been able to preserve order since buses in the city were desegregated (R. 87). The record refers to only one instance of violent reaction to racial issues in the City of Memphis, and in that incident, a sit-in demonstration, the police observed the development of mob conflict for "twenty or thirty minutes" before taking action (R. 90).[11]

Assuming, however, that immediate desegregation of all parks would pose a threat to the maintenance of law and order, respondents still would not be relieved of the duty to remove racial restrictions. This was settled for all time in *Cooper* v. *Aaron*, 358 U. S. 1 (1958). If the conditions existing in Little Rock, to which the President was forced to send federal troops, could not excuse postponement of

[11] Respondents' witnesses attempted to make much of Memphis' "peculiar location" in the southwest corner of Tennessee, bordering on heavily Negro counties of Mississippi and Arkansas (R. 47-48, 53-55, 90). Apparently it is feared that immediate and total integration would cause a massive influx of outside Negroes into Memphis' parks and promote racial agitation by members of both races. Like respondents' other evidence on the issue of violence, this is irrelevant speculation.

school desegregation, certainly a city "singularly blessed by the absence of racial turmoil" cannot continue its discriminatory policies in the name of maintaining law and order. As this Court held, "[L]aw and order are not here to be preserved by depriving the Negro children of their constitutional rights," 358 U. S. at 16. The case of *Buchanan* v. *Warley*, 245 U. S. 60, 81 (1917), established the same principle over forty-five years ago: "[I]mportant as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." Cf. *Taylor* v. *Louisiana*, 370 U. S. 154 (1962).

Closing of Facilities

Related to the claim that violence would flare up if immediate desegregation were ordered is respondents' contention that many facilities would have to be closed because insufficient personnel would be available to provide police protection at all parks (R. 41, 61, 64, 73, 85-86). This contention rests precariously on the premise that violence would constitute a serious problem. As was observed above, precious little evidence justifies concern on this score. Furthermore, the existing pattern of residential segregation (R. 67) substantially reduces the chance that neighborhood playgrounds, which comprise a major portion of the park system, will experience much actual desegregation even when official restrictions are removed.

On the other hand, in the unlikely event that respondents' fears of widespread public disturbance are vindicated, ample police protection is available even in the most extreme situations from state and federal law enforcement agencies. Given the capacity of law enforcement officials to maintain order, the courts should not be deterred from

enforcing constitutional rights by defiant threats to close public facilities. Cf. *City of St. Petersburg* v. *Alsup*, 238 F. 2d 830, 832 (5th Cir. 1956), *cert. denied*, 353 U. S. 922. Indeed, in numerous school cases segregation has been enjoined in the face of closing laws and enforcement of the closing laws has been enjoined as well. *James* v. *Almond*, 170 F. Supp. 331 (E. D. Va. 1959), *app. dismissed*, 359 U. S. 1006; *Aaron* v. *McKinley*, 173 F. Supp. 944 (E. D. Ark. 1959), *aff'd sub nom. Faubus* v. *United States*, 361 U. S. 197; *Bush* v. *Orleans Parish School Board*, 187 F. Supp. 42 (E. D. La. 1960), *aff'd*, 365 U. S. 569; *Id.*, 188 F. Supp. 916 (E. D. La. 1960), *aff'd*, 365 U. S. 569; *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E. D. La. 1961), *aff'd*, 368 U. S. 515 (1962).

Economic Loss

The second most important factor (R. 57) motivating respondents to proceed slowly was the possibility of revenue losses resulting from a predicted decline in attendance at integrated facilities (R. 48, 57-58, 84-85). The only fact mentioned in this connection was that three-quarters of a million dollars is collected annually from revenue-producing facilities. Comparative rates of attendance at segregated and nonsegregated parks were not given. No evidence of decreasing attendance at integrated facilities was offered. This claim is entirely bereft of evidentiary support.

However, respondents' failure to show that integration would cause economic loss is of little consequence. The City of Memphis and its Park Commission, as instrumentalities of the State of Tennessee, should not be allowed to profit from a system based on racial segregation. The lower courts have decided this point often. See *Department of Conservation and Development* v. *Tate*, 231 F. 2d 615 (4th Cir. 1956), *cert. denied*, 352 U. S. 838 (1956); *City*

of St. Petersburg v. *Alsup*, 238 F. 2d 830 (5th Cir. 1956), *cert. denied*, 353 U. S. 922 (1957); *City of Fort Lauderdale* v. *Moorhead*, 152 F. Supp. 131 (S. D. Fla.), aff'd 248 F. 2d 544 (5th Cir. 1957). Cf. also *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 724 (1961).[12]

Loss of Title to City Properties Burdened With Restrictive Covenants

Another consideration purporting to stand in the way of immediate desegregation relates to those facilities, particularly the Pink Palace Museum, located on lands conveyed to the city through deeds containing facially restrictive clauses (R. 33-37, 50-52, 59-60). The city argued that the federal courts should abstain from ordering desegregation until the state courts had determined whether title to such properties would revert to the grantors if the covenants or conditions were breached. To that end, the district court ordered the city to seek an adjudication in the state courts (R. 103, 108). This was plain error, for whatever the outcome of that litigation, the city may not continue to operate these facilities on a segregated basis. See *Pennsylvania* v. *Board of City Trusts of Philadelphia*, 353 U. S. 230 (1957). This property litigation may be a long and arduous process, during which Negroes should not be forced to endure discrimination.

This is particularly true where, as here, constitutional rights are being denied on a mere speculation that the

[12] The respondents were also solicitous of the vested interest in segregation held by private concessionaires who operate under contract with the Park Commission and rely on high rates of attendance (R. 42, 65, 66, 83, 84). Again there was no proof of a genuine threat to the concessionaires' interests. Moreover, if this claim could be substantiated, *Burton* v. *Wilmington Parking Authority*, *supra*, which required the lessee to admit Negroes, more than establishes the Commission's duty to desegregate where it retains control of policy in the parks.

grantor may assert his supposed rights under the racial restriction. The deed in question provided that the racial restriction could be enforced by the grantor only after he had given a written notice and a further ninety-day period of continued violation had elapsed (R. 36). It is extremely doubtful that a corporate grantor would attempt to enforce such a racial condition where its breach was occasioned by obedience to an injunction. Indeed, at the time of trial, the grantor had given no notice even though the restriction was being violated to the extent of allowing Negroes to use the Pink Palace on Tuesdays (R. 50-51).

Other Factors

The other considerations urged by respondents—that Negro facilities were equal to those provided for whites, that immediate desegregation would reduce good will between the races, and that additional time was needed for the citizens of Memphis to adjust to a changing social structure—are equally inapposite. To the "equal facilities" argument (R. 44-46, 59, 63, 69, 71, 72, 78), the answer is that 58 parks are reserved for white persons, 25 for Negroes (R. 69, 92). Regardless of the proportion of Memphis' population which Negroes comprise (35% (R. 47)), those 25 facilities are necessarily more widely scattered throughout the city than the 58 white facilities, and thus are less accessible. Indeed it is questionable whether separate recreational facilities in a city of 500,000 can ever be equal, even when judged solely by tangible factors. When less tangible factors are considered, it becomes relevant that the conceded right of petitioners to freedom from segregation is grounded on the premise that separate facilities are inherently unequal. Liberation of the Negro school child from feelings of racial inferiority cannot be achieved by relegating him to a segregated playground after school hours.

The contention that existing good will between the races would suffer if the Negro petitioners' rights were vindicated immediately is spurious (R. 88). If contingent upon continued subjection of one race to a position of inferiority, this communal bond is hardly worthy of preservation; if it is not so conditioned, integration will cause no problem. At any rate, *Cooper* v. *Aaron*, *supra*, demonstrates that even extreme racial tension cannot prevent the enforcement of Fourteenth Amendment rights.

Additionally, it was pleaded that respondents be given the time that gradual desegregation would provide for the citizens of Memphis to adjust to new conditions (R. 72, 89). Except for references to problems of police protection (but see *Cooper* v. *Aaron*, *supra*; *Taylor* v. *Louisiana*, *supra*), respondents offered no proof that gradual adjustment, which prolongs any possible period of disquiet, should cause less pain than immediate adjustment. A fair reading of this record compels the conclusion that the Commission was simply hesitant to move ahead of community acceptance of this Court's decisions. As this Court held in the *Brown* case, "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." 349 U. S. at 300.

The various contentions raised by respondents reveal a fundamental misunderstanding of the nature of the problems which this Court contemplated as justifying some delay in public school desegregation. Obviously this Court did not mean that constitutional rights could be deprived indefinitely or whenever delay would make the transition easier. Rather, as the list of administrative problems set out in the *Brown* opinion implies, delay is only tolerable when additional time is needed for the responsible authorities to formulate solutions to *bona fide* administrative difficulties, or, to a lesser extent, to carry into execution complex administrative procedures. Without exception,

respondents in this case failed to explain to the district court how additional time might be used constructively to devise administrative procedures for the solution of their supposed problems. Rather they urged that the problems would disappear if only sufficient time were given for desegregation to be effected gradually. Both the letter and spirit of the 1955 decision command more diligent effort.[13]

Finally, respondents urged that they had shown good faith. This they claimed with an apparent sincerity[14] which the facts do not bear out. Although this Court established that segregated parks violate the Fourteenth Amendment in 1954 (*Muir* v. *Louisville Park Theatrical Ass'n*, 347 U. S. 971), several new parks and facilities have been opened on a segregated basis in Memphis since that time (R. 31, 52; 14, 102). What better opportunity to effectuate of sincere policy of gradual desegregation than to admit all citizens as each new park is opened? What better way to solidify a segregated system than to segregate new facilities? The city claimed that all "city-wide" facilities have been opened to both races, but the record shows that Crump Stadium was not open to Negroes (R. 79). It was contended that Court Square had been desegregated, yet there were no rest rooms for Negroes (R. 75). Contrary to announced policy, some neighborhood playgrounds in predominantly Negro neighborhoods were still reserved for whites (R. 78-79). And, against the protestation that twenty-five facilities had been desegregated must be placed the fact that Negroes were not

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[13] Typical of respondents' approach was the treatment of the proposition that "extra supervisors and employees" would be needed in newly integrated facilities (R. 47). Having predicted this need, the Chairman of the Commission failed to explain why such personnel would be needed, how the Commission proposed to meet this supposed need, or why time would be necessary to work out a solution.

[14] The Chairman of the Park Commission stated that he would "abide by the rules of this court or get off the Park Commission, because I want no incidents here like they have had in other parts of the south" (R. 53).

adequately informed of their right to attend newly desegregated facilities. The testimony of H. S. Lewis, Director of Parks, concerning the recent desegregation of one facility is enlightening:

> Q. "Was there any publicity given to the fact that it had been integrated?" A. "No."
>
> Q. "Was there any way that Negroes could know that they had a right to use Court Square?" A. "Except they used it and were not chased."
>
> Q. "I say if the police do not put them out of a particular park then they are free to use it?" A. "Certainly."
>
> Q. "They would not know, according to your testimony, whether they are free to use it until the police asked them to get out?" A. "That could be."
>
> Q. "Have Negroes been advised of their right to use Confederate Park?" A. "They have used it. Whether they have been advised or not is a good question" (R. 75-76).

Judged in the light of these facts, the Commission can hardly assert that good faith, in the ordinary meaning of the term, has been shown. Much less has it shown "good faith compliance at the earliest practicable date" or "good faith implementation of the governing constitutional principles." The case it put before the district court displays its apparent inability even to understand those principles.

The district court in this case, although finding that Memphis' recreational system is operated on a racially discriminatory basis, refused to grant either injunctive or declaratory relief, approved a tentative plan to open eight facilities over a period of two and a half years, granted respondents six months in which to file a complete plan, and refused to adjudicate the allowability of continued segregation by state officials on land burdened by a racially re-

strictive covenant (R. 102-04). As this brief has undertaken to demonstrate, the district court's judgment rested on a clearly erroneous conception of the meaning of the *Brown* decision and of the evidence which a court should consider. Its action constituted an abuse of discretion which the Court of Appeals should have reversed. *Clemons* v. *Board of Education of Hillsboro, Ohio,* 228 F. 2d 853 (6th Cir. 1956); *id.* at 859 (Stewart, J., concurring). Fully consistent with this Court's recognition of a District Court's competence to assess local conditions with which it is familiar is the fundamental proposition that disregard of overriding constitutional principles must not be tolerated.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

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